Supreme Court, U.S.
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No. 01-827

In The

Supreme Court of the United States

CRYSTAL STAR PHILLIPS, Individually, and As next of kin to Martin Shane Phillips, on behalf of THE ESTATE OF MARTIN SHANE PHILLIPS By and through her mother, legal guardian and Next friend, MINNIE CHRISTINA DACZEWITZ, and FRED MARTIN PHILLIPS, JR., parent of Martin Shane Phillips,

Petitioners,

versus

HILLCREST MEDICAL CENTER, an Oklahoma Corporation doing business in the State of Oklahoma,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Tenth Circuit

SUPPLEMENTAL BRIEF IN OPPOSITION FOR RESPONDENT HILLCREST MEDICAL CENTER

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RESPONDENT'S SUPPLEMENTAL BRIEF

Plaintiffs/Petitioners served their Reply brief on Defendant/Respondent Hillcrest Medical Center on February 21, 2002. In their Reply, the Petitioners allege that the Pretrial Conference Order which Hillcrest attached to its Brief in Opposition was not the final Pretrial Conference Order entered by the Court. The Petitioners are correct, and Hillcrest hereby notifies this Court and the Petitioners that Hillcrest inadvertently and incorrectly attached one of the Pretrial Conference Orders drafted by the parties during the course of the ten (10) pretrial conferences held in this case. The Order attached by Hillcrest was marked "final" in its office file. However, this agreed Pretrial Conference Order was not the "final" Order entered by the Court, and the Pretrial Conference Order which the Petitioners attached to their Reply is in fact the final Order which was signed by the Trial Court and the attorneys for the parties.[1]

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[1] Hillcrest would note for this Court that the Pretrial Order attached by the Petitioners to their Reply brief does contain a few typographical errors when compared with the original Agreed Amended Pretrial Order on file with the District Court. Additionally, the District Court attached an Addendum to the Final Pretrial Order regarding the District Court's rulings during pretrial motions, which is not included in Petitioner's Appendix. Notwithstanding these comments, a copy of the original Agreed Amended Pretrial Order and Addendum was made a part of the appellate record in Volume IV, No. 4, of the Petitioners' Appendix to their Tenth Circuit appeal.

Despite this error, Hillcrest respectfully submits that the final Pretrial Conference Order, as well as the additional material cited by Hillcrest in its Brief in Opposition, support Hillcrest's position that Petitioners failed to make a "failure to stabilize" argument under 42 U.S.C.A. § 1395dd(b). The Petitioners' allegations under EMTALA throughout the trial and appeal of this case have always been under subsection (a) – that Hillcrest allegedly failed to provide an appropriate medical screening to the Petitioners' decedent.

Respondent Hillcrest respectfully requests that this Honorable Court deny the Petition for a Writ of Certiorari.

Respectfully submitted,

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